

RM-10403

⁷ 67 Fed Reg 42730 (2002)

one filed by Progeny LMS LLC ("the Progeny petition"),⁴ and one that Havens intended to file at a later date. The Progeny petition seeks rule changes for the Location and Monitoring Service ("LMS") in the 915 MHz band. Specifically, Progeny seeks elimination of restrictions barring a single licensee from holding all LMS licenses in a given area, elimination of the restriction on real-time interconnection, elimination of the restriction on the types of services LMS licensees may offer, and the substitution of technical limits, as necessary, for the current service limitations. Progeny also requests modification of the safe harbor provision of Section 90.361 of the rules that creates a presumption of non-interference from Part 15 and Amateur operations in the 902 – 928 MHz band.⁵ Havens asserts that the changes to the Part 15 rules adopted in the *Second Report and Order* that allow increased flexibility for unlicensed devices may lead to increased Part 15 use, which would jeopardize effective use of LMS in this spectrum.

4. Five parties filed comments opposing Havens' request to delay the Part 15 rule changes for the 915 MHz band.⁶ Commenters generally state that Havens has not made a showing that the flexibility allowed for unlicensed devices under the new rules will have an adverse affect on Location and Monitoring Service device operation.⁷ Additionally, Intersil Corporation and Symbol Technologies, Inc. ("Intersil") state that Havens has failed to establish that the rule changes adopted in the *Second Report and Order* are contrary to the public interest.⁸

DISCUSSION

5. We agree with the commenters that Havens has not shown sufficient cause for delaying the implementation date of the rules adopted in the *Second Report and Order*. The changes to the Part 15 rules that allow increased flexibility for manufacturers to improve product performance did not change the technical requirements, *i.e.*, maximum peak power and power spectral density, that we find adequate to protect other spectrum users from interference. An LMS receiver will experience no more interference from a Part 15 device operating under the rules adopted in the *Second Report and Order* than under the prior rules. Havens has made no showing that contradicts this conclusion, and a mere statement of belief that increased use may lead to increased interference is not sufficient justification for reconsideration.⁹ In the event that the Commission proposes to revise its rules in response to the Progeny petition, interested parties can address Part 15 and LMS issues in the context of that rulemaking proceeding.

6. Finally, we decline to delay implementation of rule changes on the mere speculation that a Petition for Rulemaking may be filed that may affect use of the band. We note that the rule changes adopted in the *Second Report and Order* became effective on July 25, 2002. Havens did not raise any objections to the proposals during the pendency of this proceeding and has not filed a Petition for Rulemaking concerning the 915 MHz band. In light of the above, we find that Havens has not presented

⁴ See Public Notice, *Wireless Telecommunications Bureau Seeks Comment on Petition for Rulemaking Regarding Location and Monitoring Service Rules*, RM-10403, DA 02-817, April 10, 2002.

⁵ 47 C.F.R. 90.361.

⁶ Oppositions were filed by Agere Systems, License Exempt Alliance, WaveRider Communications, Inc., and jointly by Intersil Corporation and Symbol Technologies, Inc. The IEEE 802.18 Radio Regulatory Technical Advisory Group filed reply comments in opposition of Havens.

⁷ See comments of Agere Systems and Intersil Corporation and Symbol Technologies, Inc. joint comments. See also reply filed by IEEE 802.18 Radio Regulatory Advisory Group.

⁸ Intersil at page 2.

⁹ See, *e.g.*, Regulatory Policy Regarding the Direct Broadcast Satellite Service, *Memorandum Opinion and Order*, Gen. Docket No. 80-603, 94 FCC 2d 741, 747-748 (1983).

sufficient justifications to warrant reconsideration of the rules adopted in the *Second Report and Order* in this proceeding

ORDERING CLAUSES

7 Therefore, pursuant to Sections 4(i), 302, 303(e), 303(f), 303(g), 303(r), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 302, 303(e), 303(f), 303(g), 303(r), and 405, IT IS ORDERED that the Petition for Reconsideration filed by Warren C. Havens and Telesaurus GB, LLC IS DENIED

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary